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10 CFR Ch. II (1–16 Edition)

final determination under paragraph (c) of this section may be appealed to the cognizant Senior Procurement Executive (SPE) for either DOE or the National Nuclear Security Administration (NNSA). The mailing address for the DOE SPE is Office of Procurement and Assistance Management, 1000 Independence Ave., SW, Washington, DC 20585. The mailing address for the NNSA SPE is Office of Acquisition and Supply Management, 1000 Independence Ave., SW., Washington, DC 20585.

(e) *Effect of appeal.* The filing of an appeal with the SPE shall not stay any determination or action taken by DOE which is the subject of the appeal. Consistent with its obligation to protect the interests of the Federal Government, DOE may take such authorized actions as may be necessary to preserve the status quo pending decision by the SPE, or to preserve its ability to provide relief in the event the SPE decides in favor of the appellant.

(f) *Review on appeal.* (1) The SPE shall have no jurisdiction to review

(i) Any preaward dispute (except as provided in paragraph (f)(2)(ii) of this section), including use of any special restrictive condition pursuant to § 600.114, § 600.212, or § 600.304;

(ii) DOE denial of a request for a deviation under § 600.4, § 600.103, § 600.205, or § 600.303 of this part;

(iii) DOE denial of a request for a budget revision or other change in the approved project under § 600.125, § 600.127, § 600.222, § 600.230, § 600.315, or § 600.317 of this part or under another term or condition of the award;

(iv) Any DOE action authorized under § 600.162(a)(1), (2), (3) or (5), § 600.243(a)(1), (a)(3), or § 600.352(a)(1), (2), (3) or (5) for suspensions only; or § 600.162(a)(4), § 600.243(a)(4) or § 600.352(a)(4) for actions disapproving renewal applications or other requests for extension of time or additional funding for the same project when related to recipient noncompliance, or such actions authorized by program rule;

(v) Any DOE decision about an action requiring prior DOE approval under § 600.144, § 600.236, or § 600.331 of this part or under another term or condition of the award;

(2) In addition to any right of appeal established by program rule, or by the terms and conditions (not inconsistent with paragraph (f)(1) of this section) of an award, the Board shall have jurisdiction to review:

(i) A DOE determination that the recipient has failed to comply with the applicable requirements of this part, the program statute or rules, or other terms and conditions of the award;

(ii) A DOE decision not to make a continuation award based on any of the determinations described in paragraph (f)(2)(i) of this section;

(iii) Termination of an award for cause, in whole or in part, by DOE;

(iv) A DOE determination that an award is void or invalid;

(v) The application by DOE of an indirect cost rate; and

(vi) DOE disallowance of costs.

(3) In reviewing disputes authorized under paragraph (f)(2) of this section, the Board shall be bound by the applicable law, statutes, and rules, including the requirements of this part, and by the terms and conditions of the award.

(4) The decision of the Board shall be the final decision of the Department.

[61 FR 7166, Feb. 26, 1996, as amended at 74 FR 44276, Aug. 28, 2009]

§ 600.23 [Reserved]

§ 600.24 Noncompliance.

(a) Except for noncompliance with nondiscrimination requirements under 10 CFR part 1040, whenever DOE determines that a recipient has not complied with the applicable requirements of this part, with the requirements of any applicable program statute or rule, or with any other term or condition of the award, a DOE Contracting Officer shall provide to the recipient (by certified mail, return receipt requested) a written notice setting forth:

(1) The factual and legal bases for the determination of noncompliance;

(2) The corrective actions and the date (not less than 30 days after the date of the notice) by which they must be taken.

(3) Which of the actions authorized under § 600.122(n), § 600.162(a), § 600.243(a), § 600.312(g), or § 600.352(a) of this part DOE may take if the recipient does not

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achieve compliance within the time specified in the notice, or does not provide satisfactory assurances that actions have been initiated which will achieve compliance in a timely manner.

(b) DOE may take any of the actions set forth in § 600.122(n), § 600.162(a), §§ 600.243(a), 600.312(g), or 600.352(a) of this part concurrent with the written notice required under paragraph (a) of this section or with less than 30 days written notice to the recipient whenever:

(1) There is evidence the award was obtained by fraud;

(2) The recipient ceases to exist or becomes legally incapable of performing its responsibilities under the financial assistance award; or

(3) There is a serious mismanagement or misuse of financial assistance award funds necessitating immediate action.

[61 FR 7166, Feb. 26, 1996, as amended at 64 FR 56420, Oct. 20, 1999; 74 FR 44277, Aug. 28, 2009]

§ 600.25 Suspension and termination.

(a) *Suspension and termination for cause.* DOE may suspend or terminate an award for cause on the basis of:

(1) A noncompliance determination under § 600.24, § 600.122(n), § 600.162(a), § 600.243(a) or § 600.352(a); or

(2) A suspension or debarment of the awardee under 2 CFR 180 and 901.

(b) *Notification requirements.* Except as provided in § 600.24, § 600.162(a), § 600.243(a), or § 600.352(a) before suspending or terminating an award for cause, DOE shall mail to the awardee (by certified mail, return receipt requested) a separate written notice in addition to that required by § 600.24(a) at least ten days prior to the effective date of the suspension or termination. Such notice shall include, as appropriate:

(1) The factual and legal bases for the suspension or termination;

(2) The effective date or dates of the DOE action;

(3) If the action does not apply to the entire award, a description of the activities affected by the action;

(4) Instructions concerning which costs shall be allowable during the period of suspension, or instructions concerning allowable termination costs,

including in either case, instructions concerning any subgrants or contracts;

(5) Instructions concerning required final reports and other closeout actions for terminated awards (see §§ 600.170 through 600.173, §§ 600.250 through 600.252 and §§ 600.350 through 600.353);

(6) A statement of the awardee's right to appeal a termination for cause pursuant to § 600.22; and

(7) The dated signature of a DOE Contracting Officer.

(c) *Suspension.* (1) Unless DOE and the awardee agree otherwise, no period of suspension shall exceed 90 days.

(2) DOE may cancel the suspension at any time, up to and including the date of expiration of the period of suspension, if the awardee takes satisfactory corrective action before the expiration date of the suspension or gives DOE satisfactory evidence that such corrective action will be taken.

(3) If the suspension has not been cancelled by the expiration date of the period of suspension, the awardee shall resume the suspended activities or project unless, prior to the expiration date, DOE notifies the awardee in writing that the period of suspension shall be extended consistent with paragraph (c)(1) of this section or that the award shall be terminated.

(4) As of the effective date of the suspension, DOE shall withhold further payments and shall allow new obligations incurred by the awardee during the period of suspension only if such costs were authorized in the notice of suspension or in a subsequent letter.

(5) If the suspension is cancelled or expires and the award is not terminated, DOE shall reimburse the awardee for any authorized allowable costs incurred during the suspension and, if necessary, may amend the award to extend the period of performance.

(d) *Termination by mutual agreement.* In addition to any situation where a termination for cause pursuant to §§ 600.24, 600.160 through 600.162 §§ 600.243 through 600.244 or §§ 600.350 through 600.353 is appropriate, either DOE or the awardee may initiate a termination of an award (or portion thereof) as described in this paragraph. If the awardee initiates a termination, the awardee must notify DOE in writing and specify the awardee's reasons for